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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO. CONFIRMATION I	
10/577,850	05/24/2007	Fabien Poulard	Q94564 4893	
23373 SUGHRUE MI	7590 10/26/200 ON, PLLC	EXAMINER		
2100 PENNSY	LVANIA AVENUE, N	BLIZZARD, CHRISTOPHER JAMES		
SUITE 800 WASHINGTO	N, DC 20037	ART UNIT	PAPER NUMBER	
			3771	
		MAIL DATE	DELIVERY MODE	
			10/26/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

		Applicati	on No.	Applicant(s)		
Office Action Summary		10/577,8	50	POULARD, FABIEN		
		Examine		Art Unit		
		CHRISTO	PHER BLIZZARD	3771		
Period fo	The MAILING DATE of this communication	on appears on the	cover sheet with the	correspondence ad	dress	
A SH WHIC - Exter after - If NC - Failu Any r	ORTENED STATUTORY PERIOD FOR FOR HEVER IS LONGER, FROM THE MAILING IS IN THE MAY BE AVAILABLE OF THE M	NG DATE OF TH CFR 1.136(a). In no ev tion. period will apply and w y statute, cause the app	HIS COMMUNICATIO ent, however, may a reply be til ill expire SIX (6) MONTHS from dication to become ABANDONE	N. mely filed n the mailing date of this co ED (35 U.S.C. § 133).		
Status						
2a)⊠	Responsive to communication(s) filed on This action is <b>FINAL</b> . 2b)  Since this application is in condition for a closed in accordance with the practice un	This action is rullowance except	non-final. for formal matters, pre		e merits is	
Dispositi	on of Claims					
5)□ 6)⊠ 7)□ 8)□	Claim(s) 1,2,4,5 and 7-11 is/are pending 4a) Of the above claim(s) is/are wi Claim(s) is/are allowed. Claim(s) 1,2,4,5 and 7-11 is/are rejected Claim(s) is/are objected to. Claim(s) are subject to restriction  on Papers	ithdrawn from co	nsideration.			
	•	aminer				
<ul> <li>9) ☐ The specification is objected to by the Examiner.</li> <li>10) ☒ The drawing(s) filed on 8/3/09 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</li> <li>11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.</li> </ul>						
Priority ι	ınder 35 U.S.C. § 119					
<ul> <li>12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</li> <li>a) All b) Some * c) None of:</li> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> <li>* See the attached detailed Office action for a list of the certified copies not received.</li> </ul>						
2)  Notic 3) Inforr	t(s) e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-9- nation Disclosure Statement(s) (PTO/SB/08) r No(s)/Mail Date	48)	4) Interview Summary Paper No(s)/Mail D 5) Notice of Informal F 6) Other:	ate		

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### **DETAILED ACTION**

1. This office action is in response to preliminary amendment filed on 8/3/09. As directed by the amendment, claims 1, 2, 4, 5, and 7 were amended, claims 8-11 were added, and claims 3 and 6 were cancelled. Thus, claims 1, 2, 4, 5, and 7-11 are presently pending in this application.

## Claim Rejections - 35 USC § 112

- The following is a quotation of the second paragraph of 35 U.S.C. 112:
   The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
- 3. Claims 1, 2, 4, 5, 7, and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said expulsion channel" in the ninth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

- 4. Claim 4 recites the limitation "according to claim 3" in the first line of the claim.

  There is insufficient antecedent basis for this limitation in the claim.
- 5. Regarding claim 7, applicant fails to disclose adaptation of pump necessary so that it "dispenses the product in a fine spray that is undetectable by the user."

# Claim Rejections - 35 USC § 103

- 6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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7. Claims 1, 2, 5, and 7-11 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomaka (6,651,844) in view of Rocci (6,138,669).

8. Regarding claims 1, 2, 5, and 7-11, Tomaka discloses a fluid product nasal atomizing and spraying device (10) comprising a pump that operates without piezoelectric, electrostatic spraying mechanisms or propellant gas (column 3, lines 17-18), a spray head (20) (fig. 2) to actuate the pump manually (column 3, lines 27-28), and a dispensing detection means (40) to detect that a product does has been dispensed. The detection means (40), which is connected to electronic means (52) to process the signal, outputs a signal to inform the user that a dose has been dispensed by the pump (column 5, lines 8-12). Tomaka further discloses the pump being connected to a spraying orifice (16a) through an expulsion channel (16) (fig. 2), but does not disclose the detection means being provided in the expulsion channel. Rocci teaches a dose counter for a nasal device (column 3, lines 44-50) with a detection means in the form of a pressure sensor (12) provided in an expulsion channel (7) (fig. 3) and adapted to detect the passage of a product in the expulsion chamber due to a pressure difference at the time that a product dose is sprayed (column 5, lines 118). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the nasal spray device of Tomaka with a detection means provided in an expulsion chamber as taught by Rocci in order to provide the advantage of fewer miscounts, as taught by Rocci (column 2, lines 44-47).

# Response to Arguments

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1. Applicant's arguments filed 8/3/09 have been fully considered but they are not persuasive. Applicant's arguments concerning the sensor of Rocci not being operable in the device of Tomaka on the grounds that no pressure burst exist, is not persuasive since in order for a fluid to travel through a passage, such as the passage of Tomaka, a pressure difference must exist therefore the sensor of Rocci would be able to sense the dispensing of medicament in the device of Tomaka.

#### Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTOPHER BLIZZARD/ Examiner, Art Unit 3771 /Justine R Yu/ Supervisory Patent Examiner, Art Unit 3771